

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1495 of 2017

Rukhsar Alam S/o Shri Isha Khan, Aged About 40 Years R/o
Shriram Market, Ramnagar, Supela, Bhilai, Tahsil And District Durg
Chhattisgarh.

---- Petitioner

Versus

Khurshid Alam S/o Mohd. Akhatar Husain, Aged About 30 Years R/o
Shriram Market, Ramnagar, Supela, Bhilai, Tahsil And District Durg
Chhattisgarh.

---- Respondent

For petitioner- Smt. Renu Kochar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

31/10/2017

Heard.

1. Instant petition is against the order dated 25/07/2017 whereby the order dated 25/07/2016 passed by the learned Judicial Magistrate was affirmed by the Additional Sessions Judge, Durg.
2. Learned counsel for the petitioner submits that one opportunity may be afforded to the petitioner to place on record the evidence as on that date the advocate could not appear. Consequently, it was closed.
3. Perusal of the order would show that respondent Khursid Alam filed a complaint under section 138 of the Negotiable Instruments Act on 17/07/2013. The argument were heard on such complaint on 27/07/2013 and it was registered. Thereafter, after denial of the charges evidence was further recorded of the complainant on 30/05/2015 and it was closed. Statement of the accused was recorded on 7/07/2015. Thereafter case was fixed for 12/08/2015 for defence evidence. Petitioner could not produce defence evidence and the case was adjourned to further three dates on 15/09/2015, 26/09/2015 & 13/10/2015 thereby four dates were

given for defence evidence. Eventually on 13/10/2015 right to lead evidence was closed and case was fixed for final argument on 5/11/2015. Thereafter, petitioner sought time for final argument on 5/11/2015, 17/11/2015, 8/12/2015, 22/12/2015 and on 28/12/2015. Thereby five dates were availed for final argument. Case was thereafter fixed for pronouncement of judgment on 2/01/2016 which subsequently postponed to 11/01/2016. Before that in the intervening period on 8/01/2016 one application was filed under Section 311 & 315 of Cr.P.C. to lead evidence in defence by the petitioner. Learned JMFC on 25/01/2016 allowed such application and gave another opportunity to adduce evidence in defence. Subsequently, the petitioner accused again failed to appear on 5/02/2016 and on 16/02/2016 he was partially examined. Thereafter, he was examined, cross-examined on 24/02/2016 and was discharged finally on 2/03/2016.

4. Reading of the dates together would show that on two occasions opportunity were given to adduce evidence in defence. Complaint was filed in the year 2013 and after closure of the evidence of the complainant on 7/07/2015 from 12/08/2015 till last date of 25/07/2016 wherein the orders were passed under Section 311 of Cr.P.C. on some pretext or the other dates were obtained. No reasonable explanation has been made as to why such evidence in defence was withheld and many dates have been passed. Prima facie it appear that all the efforts have been made to protract the trial. Therefore, in such circumstances of the case the provisions of Section 311 of Cr.P.C. cannot be invoked. As such petition has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

